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CANBERRA YELLOWCAKE: THE POLITICS OF URANIUM AND HOW ABORIGINAL LAND RIGHTS FAILED THE MIRRAR PEOPLE

by
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Of all pursuits, doing history perhaps provides the keenest sense of the interrelatedness of the 'things that happen' which shape our worlds. The variety of stakeholders, market forces, social movements, political opinion and power plays that are the story of the Ranger and Jabiluka uranium projects make for a complex crossroad indeed. After controversial beginnings Ranger commenced production in 1981 and, despite millions of dollars and decades of corporate and government lobbying, Jabiluka is yet to commence operation. Both project areas are today surrounded by the external boundaries of the World Heritage listed Kakadu National Park.

Kakadu was the scene of Australia's first environment impact statement, the subject of the first Commission of Public Inquiry under the Commonwealth *Environment Protection (Impact of Proposals) Act* 1974 and the site of the first recognition of a traditional claim to land outside Aboriginal reserves.¹ Jabiluka in particular has taken on iconic status for the Aboriginal land rights movement, the uranium industry, the environment movement and anti-nuclear lobby.² At the heart of this battle, in the kernel of the conflict lies the failure of Aboriginal land rights legislation to deliver meaningful rights to the recognised traditional owners of the Ranger and Jabiluka project areas, the Mirrar people.

From the mid 1960s an increasing international demand for nuclear generating capacity fuelled a comprehensive exploration in Australia for uranium.³ In 1970 the Australian Atomic Energy Commission (AAEC) reported that some sixty companies were exploring or set to explore for uranium.⁴ The Alligator Rivers Region of the Northern Territory⁵ proved to contain some of the country's richest deposits. In 1970, large deposits were identified at Narbarlek⁶, Ranger and Koongarra and then, in June 1971, the first signs of a significant deposit at Jabiluka were detected. Earlier that year, Canadian lawyer Tony Grey had formed Pancontinental Mining following promising anomalies detected by airborne scintillometer survey over Jabiluka. In October, Pancontinental entered into a joint venture at Jabiluka with the massive Getty Oil Development Company.⁷

The role of realpolitik in the development of the East Alligator uranium industry and the nexus between the creation of a national park and uranium mining is clearly illustrated by a meeting that took place in Canberra on 14 January 1971. At this meeting an official of the Gorton Commonwealth Government⁸ notified uranium industry representatives that the, 'East Alligator River region was being considered for a national park, a step which would preclude mining'.⁹ The area had been earmarked for a national park as early as 1965, when the Northern Territory Reserves Board sought approval for a declaration from the Northern Territory Administrator.¹⁰ Tony Grey, for one, was shocked – 'Surely they would not do such a thing!'¹¹ The Gorton Government representative assured the industry that uranium exploration, however, could continue:

It appeared that the conservative coalition government, under the prime ministership of John Gorton, was sympathetic to mining... The industry representatives went away from the meeting satisfied that mining interests would be safeguarded.¹²

Buoyed by such apparent government backing, Pancontinental went about the business of raising overseas capital and continuing its exploration program, confident that the mine could go on stream in some three years.¹³ Political events, however, were to overtake the joint developers of Jabiluka, for in December 1972 the Australian Labor Party was elected to office with Gough Whitlam as Prime Minister. This signified not only a change in uranium policy but flagged the beginnings of Aboriginal land rights legislation.

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In the first week following its election the new government announced it would conduct an inquiry into Aboriginal land rights in the Northern Territory with a view to introducing legislation.¹⁴ In February 1973, Justice A.E. Woodward received his commission from the Governor-General to inquire into, 'the appropriate means to recognise and establish the traditional rights and interests of Aborigines in and in relation to land'.¹⁵

The Woodward Commission, which subsequently recommended an Aboriginal Land Rights Act and outlined its structure, was the Whitlam Government's recognition of the validity of Aboriginal claims to land in the Territory. The Commission was not to be, 'concerned with whether Aborigines should be granted rights in land, since the government had already decided that they should'.¹⁶ Woodward interpreted his job to be, 'the doing of simple justice to a people who have been deprived of their land without their consent and without compensation'.¹⁷ The Woodward Commission was intended to be, and indeed became, a break point in north Australian race relations.

Woodward delivered his findings in two reports to the Government (in July 1973 and April 1974), recommending a new form of statutory title known as 'Aboriginal title', Aboriginal land trusts, the establishment of land councils, an Aboriginal Land Commission and much more. The Aboriginal Land Commissioner would hear land claims from traditional Aboriginal owners, defined as a 'local descent group' with common spiritual affiliations and a primary spiritual responsibility to a site on the land, and who are entitled by Aboriginal tradition to forage over that land. Having established the rightful traditional owners and commented on any significant detriment that would result from a grant of land, the Land Commissioner would report to the Minister to recommend that the Governor-General make a grant of title to an Aboriginal Land Trust. The accuracy, efficacy and value of the path through this labyrinth suggested by Woodward, labeled Aboriginal 'self-determination', remains a matter of conjecture to this day.¹⁸

The members of the land trust, the traditional owners, once recognised, would possess a right of veto over mining on their land. Woodward stated that, 'to deny to Aborigines the right to prevent mining on their land is to deny the reality of their land rights'. This veto could only be overridden if government determined it to be in the national interest to do so.¹⁹

With the beginnings of Aboriginal land rights came a 'freeze' on the grant of mining interests in respect of Aboriginal reserves, declared by the Whitlam Government on the announcement of the Woodward Commission in late 1972. In his second report, Woodward recommended in respect of unalienated Crown land that, 'there should be no granting of any interest in or rights over this land at least until the 1st January 1976'.²⁰ His reason was to avoid land claims being prejudiced by the grant of such an interest. The 'freeze', therefore, remained in place and with the granting of Northern Territory self-government in 1978 it continued, 'until at least December 1982'.²¹

In practical terms the 1972 freeze meant the Northern Territory uranium industry was on hold until the passage of land rights legislation and the outcomes of any land claims over land in the East Alligator region. Things were further complicated for the industry when it was informed in January 1973 by the Minister responsible for the Northern Territory, Kep Enderby, that, 'until issues relating to environmental conditions and appropriate safeguards of Aboriginal interests had been resolved, no licences in the area under consideration for the [East Alligator region] national park would be renewed'.²² In December 1973, Whitlam compounded industry woe when he announced, 'that Cabinet had agreed to establish a national park in the Region, to be given the name Kakadu'.²³

While the Whitlam Government was clearly intent on Aboriginal land rights legislation and the creation of a national park it was also keen, under the direction of its Minerals and Energy Minister, Rex Connor, to develop the uranium industry, albeit a quasi-nationalised development. The enthusiastic Connor believed that uranium prices would increase fifteen-fold in ten years²⁴ and saw the industry as part of the engine room of the national reform Whitlam planned for Australia. It was imperative, therefore, that the development of the industry be staged and that government not be driven by the agendas of private enterprise. Connor refused to grant further export contracts for uranium and began relinquishing exploration licences in the Territory. He also refused to be drawn on the Government's uranium policy, and withheld releasing any comprehensive policy for almost two years. Meanwhile, and without further detail, Whitlam announced in Tokyo in October 1973 that the Government intended the uranium industry to be fully Australian-owned.²⁵

Whitlam and Connor were preoccupied not with the interests of miners per se but with projects of national significance that they believed would establish a more economically independent Australia, free from the clutches of international capital. One overriding passion of Connor's was the enrichment of Australia's uranium, a massive undertaking which would require significant loans to establish but would result he believed in the quadrupling in the value of Australia's uranium, 'the biggest deal in Australia's history'.²⁶ The funding of such projects was dubbed, 'buying back the farm'.

As Connor tightened his stranglehold²⁷ on the industry and the Aboriginal land rights 'freeze' continued, exploration work at Jabiluka progressed. In September 1974 Pancontinental announced that its Jabiluka reserves stood at 65,750 tonnes contained U_3O_8 , 'sufficient to launch Jabiluka onto the world stage'.²⁸ Also, the international market was beginning to boom. From mid-1973 to mid-1976 the price of uranium artificially rose six-fold.²⁹ Australian industry representatives were now 'chaffing at the bit' to commence operations.

In May 1974 two key events occurred – Woodward released his seminal second report and Whitlam was returned to office with just a five-seat majority and with the Senate in Opposition control. With high inflation and unemployment, economic management became a focus of the new government. To Whitlam and his Treasurer, Dr Jim Cairns, the development of the uranium industry was now a top priority. It is at this point that the trajectories of Aboriginal land rights and uranium economics clearly intersected.

With renewed interest in uranium from 1973 on, Australia became the source of much international interest. The Shah of Iran visited Australia in September 1974 and held discussions with the Minister for Trade on the purchase of Australian uranium; representatives of the European Economic Community and the Italian Government also expressed interest in Australian uranium.³⁰ The Government needed a uranium policy, especially when the Japanese Prime Minister, Tanaka, announced he would visit Australia in late October 1974 and indicated that he, 'expected to be informed of Connor's uranium policy upon arrival'.³¹ Two weeks prior to Tanaka's visit, representatives of the joint owners of the Ranger project, Peko Mines Limited and the Electrolytic Zinc Company of Australasia (Peko-EZ³²), were summoned to Kirribilli House in Sydney to meet with Connor.

At Kirribilli, George Mackay (Peko) and John Proud (EZ) were met not only by Connor but also by Cairns and Whitlam. Connor told them that the Ranger project would be developed, but under full Government ownership and with no compensation offered. Peko-EZ could operate

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the mine and mill but the ownership would be in the hands of the Government and the marketing entirely the responsibility of the AAEC. The mining representatives said they would fight this proposal in the courts and in the media and promptly left the meeting.³³

They were summoned to a further meeting a fortnight later at The Lodge in Canberra, on 27 October 1974 – the eve of Tanaka's visit. Here Whitlam informed them that an agreement over Ranger must be reached prior to Tanaka's arrival; the Government was clearly desperate.³⁴ At three in the morning of 28 October, Peko-EZ and the Commonwealth signed the so-called Lodge Agreement that provided for a 50% equity stake for each party (with Peko and EZ holding 25% apiece) and for 72.5% of capital costs to be met by Government.³⁵ Several hours later Whitlam met with Tanaka and informed him that Ranger ore would assure Japan adequate supply.

The Lodge Agreement clearly undermined the integrity of Whitlam's move to legislate meaningful land rights for Aboriginal people. Here, prior to the enactment of land rights law or the hearing of any land claim and despite the freeze on grants of title to unalienated Crown land, Whitlam committed to supply Japan with U_3O_8 from Ranger. Ranger was, then, fait accompli, regardless of the opinions of local Aboriginal people. Even before land rights were enacted, they were made meaningless for the Mirrar people. The Ranger deal was entrenched a year later in a memorandum of understanding of 28 October 1975, signed by the joint owners and the Whitlam Government, providing for Ranger to proceed subject to the findings of the Fox Inquiry and the determination of Aboriginal land rights. Yet the political climate was such that the Government still had to proceed with caution.

The anti-nuclear movement domestically and internationally was now commanding significant public attention, spurred on by nuclear tests in India in May 1974. Unlike overseas, the Australian movement focused on the banning of uranium mining as it represents the first stage of the nuclear fuel cycle. Within the ALP there was vocal opposition to nuclear technology, notably from the Minister for the Environment, Dr Moss Cass. To appease public and party opinion Whitlam announced in July 1975 that a public inquiry would be conducted into, 'the proposal for the development by the AAEC in association with Ranger Uranium Mines Pty Ltd of uranium deposits in the Northern Territory'³⁶ – the Ranger Uranium Environmental Inquiry or 'Fox inquiry', after the presiding commissioner, Justice Russell Fox of the ACT Supreme Court. Over 18 months the Fox inquiry heard evidence from 303 witnesses, producing some 13,525 pages of testimony. In October 1976, Fox delivered his first report to the Government, now under the leadership of Liberal Malcolm Fraser. The Governor-General had prorogued Parliament in late 1975, following the blocking of supply by the Senate and scandalous allegations of unconventional loan-raising by Rex Connor – to fund, among other things, his vaunted uranium enrichment plant.

While not ruling out Ranger, Fox recommended the Government proceed with caution. The Deputy Prime Minister and Minister for Natural Resources, Doug Anthony, interpreted this as a green light for the mine, as did the media. The *Australian Financial Review* declared, 'Fox Gives Uranium the Go-ahead' and the *Sydney Morning Herald* exclaimed, 'Way Open to Uranium Sale'.³⁷ However, recommendation five clearly stated that, 'any decision about mining for uranium in the Northern Territory should be postponed until the Second Report of this Commission is presented'.³⁸

The Ranger Inquiry second report would deal with the thorny issues of Aboriginal people and the environment. Recognising that the imminent Aboriginal land rights legislation, 'would have

very important consequences for the development of the Alligator Rivers Region and the mines in that area³⁹ the Fraser Government made a special provision in the *Aboriginal Land Rights (Northern Territory) Act 1976*. The provision stated that, 'if this present Commission [the Fox Inquiry], for the purposes of its Inquiry, makes a finding that a group or groups of Aborigines are entitled by Aboriginal tradition to the use or occupation of an area of land, the finding is to have effect as if it were a recommendation made to the Minister by the Aboriginal Land Commissioner'.⁴⁰ Fox, then, was to hear the so-called Alligator Rivers Stage I land claim, which included the Mirrar claim to the Ranger area.

The key effect of Fox hearing the land claim was to speed it up, something naturally in the interests of the Commonwealth, a 50% stakeholder in Ranger. In May 1977, the inquiry delivered its second report and while again not specifically recommending that Ranger proceed paved the way for the development of the uranium industry. The report did recommend that any construction of uranium mines in Kakadu commence sequentially, that a national park be created, that Aboriginal land claimants be granted title, and much more. In a major win for industry, the Ranger and Jabiluka mining areas were to be excluded from the national park.⁴¹ Despite its ambivalence, the Ranger Inquiry was widely reported by Australia's media as a 'green light' for the development of Australia's uranium industry.

Fox also stated that the Northern Land Council (NLC), on behalf of the traditional owners, had, 'proposed that the areas within the Region claimed as Aboriginal land, together with the Woolwonga Aboriginal Reserve which is already Aboriginal land, should be a national park'.⁴²

While the decision to give Aboriginal people inalienable freehold (Aboriginal) title to their traditional land was the, 'first recognition in Australia of a traditional claim to Crown land outside Aboriginal reserves'⁴³, it was somewhat tainted by the Report's insensitive (albeit candid) treatment of Aboriginal opposition to mining: -

The evidence before us shows that the traditional owners of the Ranger site and the Northern Land Council (as now constituted) are opposed to the mining of uranium on that site... The Aborigines do not have confidence that their own view will prevail; they feel that uranium mining development is almost certain to take place at Jabiru, if not elsewhere in the Region as well. They feel that having got so far, the white man is not likely to stop... We have given careful attention to all that has been put before us by them or on their behalf. In the end, we form the conclusion that their opposition should not be allowed to prevail.⁴⁴

In response to Fox, the Commonwealth Government decided, in August 1977, that Australia's uranium industry would be developed – a national park would be established and uranium mining would proceed at Ranger. The Government declared that, 'Different groups, Government, Aboriginal, commercial, will have to work together to achieve a common objective'.⁴⁵ With Fox having recommended the granting of Aboriginal land (include the Ranger area) and ushering in the development of Ranger, the Commonwealth now required the recently established NLC⁴⁶ to enter into an agreement over both the national park and Ranger. It was the NLC's first mining agreement.

In passing the *Aboriginal Land Rights (Northern Territory) Act* on 9 December 1976⁴⁷ the Fraser Government had already dispensed with the Mirrar right of veto over the Ranger Project.

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Subsection 40(6) of the Act stated, 'If the land... being known as the Ranger Project Area, becomes Aboriginal land, subsection (1) does not apply in relation to that land'⁴⁸. Subsection 40(1) provided for the Aboriginal veto. Following Fox, amendments were drawn up and passed, providing that land granted in the Alligator Rivers region (excluding the Ranger area) be leased back to the Commonwealth for the purposes of a national park, with title vested in the Director of National Parks and Wildlife.

The position of the NLC regarding Ranger was somewhat invidious, as detailed in an internal memorandum by a legal officer, who stated the Land Council was,

...in the difficult position that although the traditional owners of the region and the Northern Land Council have continually objected to mining, it is forced into a position where it must write an agreement for mining or else the Government will write the agreement on behalf of the Land Council...⁴⁹

A member of the NLC legal team, David Parsons, has documented the internal problems of the Land Council during the Ranger Agreement. The final NLC meeting for the agreement, beginning 12 September 1978 in Baymili, was attended by only 28 of the 42 members of the Land Council. Of that 28, five stayed away from the meeting or walked out prior to its ratification of the agreement. NLC members were told by their chairperson, Galarrwuy Yunupingu, that, 'If we don't sign the agreement, Mr Fraser has told me he has power to block the Aboriginal Land Rights Act, and that he will stop the funds to the outstations'.⁵⁰ Parsons records that:

Many Councillors later complained that Yunupingu had put enormous pressure on Toby Gangale, one of the [Mirrar] traditional owners and that this led to Toby later complaining that he was 'sick of fighting' against the mining.⁵¹

The Ranger Agreement was eventually signed by traditional owners on 3 November 1978, the day the lease for Kakadu National Park was also signed. The deal was widely criticised as inadequate, even by the chief negotiator for the NLC, New York lawyer and activist Stephen Zorn who wrote a report critical of the agreement as early as September. Zorn, who stated his belief that the Commonwealth's involvement in Ranger had compromised the NLC, considered the financial and environmental provisions to be completely inadequate.⁵² The Land Council's handling of the agreement prompted the resignation of NLC staff and after the November signing it was reported that two NLC Council members (Dick Malwagu and Johnny Marali) had sought to restrain the Land Council from signing the agreement. The NLC subsequently (from 1985) sought to have the Ranger Agreement declared invalid on the grounds it had been signed under duress, that the Commonwealth had applied undue political pressure and had acted unconscionably. Leo Finlay of the Borroloola community told the *Northern Territory News* that:

Mr Yunupingu told us the Prime Minister, Mr Fraser, said to him that if the agreement was not signed the Government would take the NLC and the outstation movement away from the Aboriginal people and they would have nothing.⁵³

The NLC dropped its court action in 1993 after the High Court allowed an appeal by the Commonwealth against a Federal Court order to disclose to the NLC federal Cabinet notebooks and notes regarding Cabinet.⁵⁴

At the time of the agreement the NLC attracted much public criticism. Dr H.C. 'Nugget' Coombs of the Council for Aboriginal Affairs regarded the NLC with great suspicion, claiming that while it had been intended to become the mouthpiece of Aboriginal people it was in fact, 'increasingly distrusted by many of them, and is commonly accused of being, instead, the agent of the Government and the mining companies'.⁵⁵

Coombs believed that with Ranger the Commonwealth had, 'identified wholly with the interest of the developing companies' and through the NLC had conducted the negotiations, denied independent advice to traditional owners, limited the time available for consideration of the agreement and pressed Aborigines and their advisors, 'into hasty and ill-understood acceptance'.⁵⁶

The reason for such skepticism was, in part, due to the pecuniary benefits the Land Council receives under any agreement it reaches on behalf of traditional owners: -

Above all the Council is dependent for the resources necessary to conduct its affairs on revenue drawn from royalties and other mining company payments. Its Executive is therefore necessarily biased in favour of approval for mining projects.⁵⁷

The Commonwealth, through the NLC, had clearly frustrated the aspirations of the traditional owners who sought not only to gain tenure over their land but also to stop uranium mining upon it.

The inadequacies of the Ranger Agreement and the failure of land rights in general were recognised at the time by the national magazine of Friends of the Earth, which stated: -

Since the setting up of the Ranger Inquiry which heard their land claim, the Aboriginal people have received only part of the land they claim, a National park whose benefit to them is largely a matter for the discretion of a Commonwealth Government official, and the prospect of a number of uranium mines in what should then be called a controlled disaster zone rather than a National park.⁵⁸

There were other pressures on the Mirrar community at this time. While all this took place the developers of Jabiluka were instructed by the NLC to simply wait. 'Pancon', however, was actively engaging in its own informal consultations with traditional owners, via its 'Aboriginal liaison officer' Bob Randall⁵⁹, 'to counter the wall erected by the NLC'.⁶⁰ The Land Council had insisted that all communications be through them and refused to talk to Pancon while the Ranger negotiation was in progress. Adding to the already great strain the community was under the company instead chose to, 'bypass the NLC, risking their wrath. We went straight to the people we thought were the traditional owners of the land. Their chief was Toby Ganggali'.⁶¹

Pancon was positioning itself for the Alligator Rivers Stage II land claim, which took in more Mirrar country, including Jabiluka.⁶² The company had initially indicated it would argue detriment before the Aboriginal Land Commissioner, Justice Toohey. Hearings commenced on 24 October 1980; just three months later a decisive meeting between traditional owners and the NLC took place that soon changed Pancon's position on the land claim.

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Beside the picturesque Djarr Djarr billabong some 200 Aboriginal people, including many traditional owners, met with a handful of NLC representatives to discuss the arguments of detriment that Pancon and Peko-EZ were mounting against the land claim. Pancon's opposition, the NLC said, meant the claim was less likely to succeed. It was suggested that engaging with the company would see it support the claim or at least not argue detriment.⁶³ Three options were canvassed – to not talk with Pancon until after the land claim, to talk with Pancon about the claim but not about mining and, thirdly, to not start talking with Pancon at all. David Parsons of the NLC told the meeting that, 'the second choice would make it easier for us to get country back for everybody in the land claim'.⁶⁴

An NLC representative told the meeting,

It's certainly not the step that says yes or no to mining... It's a tactic that we have got to use in the Land Claim, because it gets Pancon off our backs, it takes them out of it, and it makes it very hard for Peko to say these Aboriginal people are going to give us a very hard time.⁶⁵

An Aboriginal interpreter, Jacob Nayinggul, told the Aboriginal participants:

Really Pancon will tell them but not talk NLC, talk NLC reps not really Pancon. NLC will be talking to Pancon, nothing, we don't know, well today we will tell them to talk to them, but not in public. But [the NLC chief negotiator] Eric Pratt will talk to Pancon, he's the one will be talking. That's what he said and we will talk about that. You fellas NLC will go and talk, you told us at Koongarra that meeting, this the same old story. You mob will go and talk. That's all. This mob now, NLC will go and talk to the mining company. We say no. We say yes, NLC will do the talking.⁶⁶

David Parsons then categorically stated that:

The NLC will not talk to Pancon about mining. The only time when that could happen, the only time the NLC will talk to the traditional owners and everybody here about a mine will be at some time later.⁶⁷

The next day the Land Council summed up the meeting in three written resolutions (not considered at the meeting) and communicated these to the Minister and to Pancon:

1. Subject to the continuation of satisfactory relationships between the Alligator Rivers Stage II claimants and their advisors, and Pancontinental Mining Limited and their advisors, the Northern Land Council is instructed to commence and conduct formal negotiations with Pancontinental Mining Limited on all aspects of the Jabiluka project.
2. The Northern Land Council shall forthwith employ such persons as it deems necessary to examine the proposals made by Pancontinental Mining Limited in respect of the Jabiluka project...
3. Any draft agreement that may be reached between the Northern Land Council and Pancontinental Mining Limited shall be referred to the traditional owners and persons affected by the Jabiluka project for their further consideration.⁶⁸

Pancon's lawyers questioned the meaning of the first resolution and were duly informed by telex the same day that it meant that Pancon would not, 'place any submissions before Land Commission in relation to detriment or otherwise oppose the claimants case'.⁶⁹

So, a meeting preoccupied with assurances that mining would not be discussed with Pancon became the very vehicle for such discussions, established an NLC negotiating team and flagged an agreement to be initialed by the NLC and Pancon.

The NLC journal *Land Rights News* reported that:

At the meeting they agreed to give the Bureau of the NLC directions to commence negotiations with Pancontinental on certain issues. The idea is for the Bureau and Pancon to talk about the things that would affect people IF mining was granted. Since this meeting Pancon has taken no active part in the land claim hearings.⁷⁰

Following the meeting Pancon had indeed withdrawn its argument of detriment and supported the land claim and for eighteen months the NLC conducted consultations largely to determine not if mining would go ahead but how it would proceed and what benefits it would bring to Aboriginal people. In the end the traditional owners, as with Ranger, simply gave in to what they considered was inevitable. Along the way there was continual pressure and positioning by the Commonwealth and the NLC, with pre-emptory media releases⁷¹, regular formal and informal meetings and Parliamentary commitments.⁷²

The Labor Party's then Shadow Aboriginal Affairs Minister, Senator Susan Ryan, described her impressions of the negotiations in a telegram to the Prime Minister:

Traditional owners I met with do not perceive that they have any real choice about mining. They believe they will be harassed continually until they agree to mining. If, as seems probable, the Jabiluka agreement is signed this week, it will not be because the Aboriginal traditional owners really choose it; but rather because they see agreement as the only way out of a situation of intense and sustained pressure.⁷³

As with Ranger, the NLC was compromised in the negotiations, although this time not solely because it was an agent of a pro-mining executive. The Chairman of the Australian Institute of Aboriginal Studies project examining the social impact of uranium mining in the Territory wrote in 1982,

In a nutshell, Pancontinental has paid more than \$300,000 to the NLC for the NLC to employ a negotiating team to negotiate with Pancontinental... Neither the NLC nor Pancon emerges well from placing themselves in a situation where the NLC appears – however incorrectly in fact – to be an agent of the principal it is engaging with.⁷⁴

Nugget Coombs believed that land rights reform had patently failed the Aboriginal people of Kakadu: 'what is happening in the Alligator Rivers region bears little resemblance to the picture envisaged in the Woodward-Fox scenario'. Writing in 1981, he stated that the Aboriginal communities of Kakadu, 'show signs of strain at almost pathological levels'.⁷⁵

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The signing of the Jabiluka agreement, which ultimately took place in June 1982 after a '10-day bargaining session' at Djarr Djarr⁷⁶, was the natural outcome of years of unbending pressure on the traditional owner community, which found itself rightfully confused at the process. This is confirmed by Pancon's former Aboriginal liaison officer, Bobby Randall:

Because it was uranium, the whole thing became political. It all got confused - it was really stressful. You wouldn't believe the games they were playing with the people. I still feel the people didn't know what it was all about.⁷⁷

As it turned out, Jabiluka was not developed, in 1983 the ALP Prime Minister Bob Hawke buried the project upon coming to office with his party's so-called 'three mine uranium policy'. For 13 years the Mirrar considered their country safe from uranium mining. The election of the Howard Government in 1996 soon changed all that. The release that year of an environmental impact statement for the Jabiluka project signaled a new stage in Jabiluka's abortive development and pressure was again brought to bear on the Mirrar community. With the approval of the pro-uranium Commonwealth and Northern Territory governments and after an unsuccessful court action by the Mirrar, construction at Jabiluka commenced in June 1998. This took place amid massive public outcry, which resulted in some 5,000 protestors from Australia and around the world (over 500 of whom were arrested) staging a peaceful blockade of the Jabiluka site for eight months. The Mirrar have taken their campaign against the mine to the international stage, securing resolutions from the European Parliament and the ongoing scrutiny of UNESCO's World Heritage Committee. Construction of Jabiluka ceased in September 1999, following the refusal of the Mirrar to approve ERA's preferred development option of processing Jabiluka ore at the existing Ranger mill. Today, Jabiluka is in what ERA has termed 'environmental management and standby phase', perhaps better referred to as purgatory. It remains both a unrealised asset and, according to the traditional owners, an environmental threat.

Despite the repeated failure of land rights to deliver meaningfully to the Mirrar community there is, however, a critical benefit in at least one agreement struck under Aboriginal land rights legislation. A traditional owner veto on 'remote milling' (milling ore sourced off-site) at Ranger was included in the deed of transfer negotiated by the NLC in 1991 on Pancontinental's sale of Jabiluka to North Broken Hill. In its small but essential way, this agreement stands in the spirit of Woodward when he wrote:

Aborigines should be free to choose their own manner of living. In saying this it is necessary to remind some non-Aboriginal enthusiasts that this involves a freedom to change traditional ways as well as a freedom to retain them.⁷⁸

Notes

¹ The Draft Ranger Environmental Impact Statement of February 1974, the Ranger Uranium Environmental Inquiry and the granting of title following the Alligator Rivers Region Stage I Land Claim, respectively.

² In March 1978 a field officer of the Northern Land Council, Dehne McLaughlin, showed singular prescience when he noted in an internal memo that, 'The battle ground is and will be Jabiluka'.

³ A Cawte, 1992, *Atomic Australia 1940-1990*, New South Wales University Press, Sydney, p 135.

⁴ Australian Atomic Energy Commission, 1970, *Annual Report 1969-1970*, AGPS, Canberra, p 5.

⁵ Loosely defined as the region east of the South Alligator River and west of the East Alligator River.

⁶ Described by *The Australian* on 2 September 1970 as, 'the world's richest uranium strike', Cawte, 1992, *Atomic Australia*, p 136.

⁷ T Grey, 1994, *Jabiluka: The Battle to Mine Australia's Uranium*. The Text Publishing Company, Melbourne, p 37.

⁸ Section 35 of the *Atomic Energy Act* 1953 vests title of all prescribed substances (including uranium) in the territories of Australia in the Commonwealth.

⁹ Grey, 1994, *Jabiluka*, p 25.

¹⁰ D Lawrence, 2000, *Kakadu: the making of a national park*, Melbourne University Press, Melbourne, p 45.

¹¹ Grey, 1994, *Jabiluka*, p.25.

¹² Grey, 1994, *Jabiluka*, p 25.

¹³ Grey, 1994, *Jabiluka*, p 107.

¹⁴ Cawte, 1992, *Atomic Australia*, p 144.

¹⁵ AE Woodward, 1973, *Aboriginal Land Rights Commission: First Report*. AGPS, Canberra, p iii.

¹⁶ Woodward, 1973, *Aboriginal Land Rights Commission: First Report*, p 4.

¹⁷ Woodward, 1974, *Aboriginal Land Rights Commission: Second Report*. AGPS, Canberra, p 2.

¹⁸ See, particularly, R Trudgen, 2000, *Why warriors lie down and die: towards an understanding of why the Aboriginal people of Arnhem Land face the greatest crisis in health and education since European contact*. Aboriginal Resource and Development Services Inc., Darwin.

¹⁹ Woodward, 1974, *Aboriginal Land Rights Commission: Second Report*, p 108. Woodward was assisted in his Commission, particularly in the drafting of the Aboriginal Land Rights (NT) Act, by Counsel Gerald Brennan, later Chief Justice of the High Court.

²⁰ Woodward, 1974, *Aboriginal Land Rights Commission: Second Report*, p 28.

²¹ J Toohey, 1983, *Seven Years On: Report on the Aboriginal Land Rights (Northern Territory) Act and related matters*, AGPS, Canberra, p 63. *The Bulletin*, however, reported on 30 June 1981 that, 'The Northern Territory Government has thrown open Arnhem Land and other Aboriginal reserves to prospectors – thus ending a freeze the Whitlam Government enforced nine years ago.'

²² Grey, 1994, *Jabiluka*, p 97. The exploration work at Ranger and Jabiluka, however, continued.

²³ Ranger Uranium Environmental Inquiry, 1976, *First Report*, Presiding Commissioner – Mr Justice RW Fox, Commissioner – Mr GG Kelleher, Commissioner – Professor CB Kerr, AGPS, Canberra, p 202.

²⁴ Cawte, 1992, *Atomic Australia*, p 142.

²⁵ Grey, 1994, *Jabiluka*, p 111.

²⁶ Rex Connor, press conference, 19 December 1974, in G Smith, 1976, 'Fuelling up for Disaster', *Arena*, No 42, 1976, p25; Cawte, 1992, *Atomic Australia*, p 143.

²⁷ Connor had been dubbed 'The Strangler' by the media after an incident in the NSW legislature, in which he held a *Daily Telegraph* journalist in a headlock during an argument, in Grey, 1994, *Jabiluka*, p 95.

²⁸ Grey, 1994, *Jabiluka*, p 119.

²⁹ Cawte, 1992, *Atomic Australia*, p 146. In 1976, Friends of the Earth Australia released documents revealing that uranium suppliers had formed a cartel to fix the international spot price.

³⁰ Cawte, 1992, *Atomic Australia*, pp 146-147.

³¹ Grey, 1994, *Jabiluka*, p 125.

- ³² Ranger Uranium Mines Pty Ltd had been formed by the joint owners in early 1972 (GM Mudd, 2002, *The Ranger Project: continuing grounds for concern*, research report in preparation, p 8).
- ³³ Grey, 1994, *Jabiluka*, p 127. Regulations which would have served to expropriate the Ranger deposits were rejected by the Senate, by two votes, in September 1974 (BG Fisk & JW Farthing, 1985, 'The Ranger Uranium Mine: its history and development', *Nuclear Spectrum*, vol 1, no 2, Australian Atomic Energy Commission, pp 2-4).
- ³⁴ Grey, 1994, *Jabiluka*, p 127.
- ³⁵ Ranger Uranium Environmental Inquiry, 1976, *First Report*, p 9.
- ³⁶ Ranger Uranium Environmental Inquiry, 1976, *First Report*, p 1.
- ³⁷ Grey, 1994, *Jabiluka*, p 189.
- ³⁸ Ranger Uranium Environmental Inquiry, 1976, *First Report*, p 185.
- ³⁹ Ranger Uranium Environmental Inquiry, 1977, *Second Report*, AGPS, Canberra, p 5.
- ⁴⁰ Ranger Uranium Environmental Inquiry, 1977, *Second Report*, p 6.
- ⁴¹ Ranger Uranium Environmental Inquiry, 1977, *Second Report*, p 291.
- ⁴² Ranger Uranium Environmental Inquiry, 1977, *Second Report*, p 204.
- ⁴³ Statement by the Hon. Ian Viner, MP, Minister for Aboriginal Affairs, 25 August 1977, p 3, in Australia Parliament, 1978, *Uranium: Australia's decision*, Government Printer, Canberra.
- ⁴⁴ Ranger Uranium Environmental Inquiry, 1977, *Second Report*, p 9.
- ⁴⁵ *Uranium: Australia's Decision*, 1978, in Lawrence, 2000, *Kakadu*, p 93.
- ⁴⁶ Prior to the passage of the *Aboriginal Land Rights (NT) Act* 1976, the organisation subsequently known as the Northern Land Council had been incorporated under Northern Territory legislation as The Northern Aboriginal Land Committee Incorporated. (Ranger Uranium Environmental Inquiry, 1977, *Second Report*, p 235.)
- ⁴⁷ The bill received Assent on 16 December 1976 and commenced operation from 26 January 1977.
- ⁴⁸ Gundjehmi Aboriginal Corporation, 1997, *We are not talking about mining: The history of duress and the Jabiluka Project*, Gundjehmi Aboriginal Corporation, Jabiru, p 7. This subsection avoided the need for the Government to invoke the national interest provisions of the Act.
- ⁴⁹ S McGill, 1978, *Northern Land Council's legal and strategic position re. uranium mining*, internal NLC memorandum from legal advisor, 8 February.
- ⁵⁰ D Parsons, 1978, Inside the Ranger negotiations, *Arena*, No 51, pp 134-143.
- ⁵¹ Parsons, 1978, Inside the Ranger negotiations, pp 134-143. The NLC chairman was Gularrwuy Yunupingu.
- ⁵² Lawrence, 2000, *Kakadu*, p 102-103.
- ⁵³ *Northern Territory News*, 18 September 1978, p 2.
- ⁵⁴ The Commonwealth of Australia v. Northern Land Council and Another (1993) 176 CLR 604 FC 93/013. Some of this information is due for imminent public release under the so-called 30-year rule. This rule, however, only applies to official Cabinet Minutes and not the Cabinet notebooks in question, which are never publicly available.
- ⁵⁵ HC Coombs, 1981, *How to Balance the Aboriginal Interest in Resource Development*, paper presented to Australian National University Public Affairs Conference, Resource Development and the future of Australian Society, 21 & 22 August, p 4.
- ⁵⁶ Coombs, 1981, *How to Balance*, p 7.
- ⁵⁷ Coombs, 1981, *How to Balance*, p 8. The NLC has (somewhat feebly) refuted the suggestion of its reliance on mining agreement moneys, stating 'Land Councils do not automatically benefit from greater mining activity on Aboriginal land; although the Aboriginal Benefits Reserve may hold more money the Minister for Aboriginal and Torres Strait Islander Affairs must approve any increase in the amounts received by the Land Councils.' (*Rewriting History: NLC response to the Gundjehmi Aboriginal Corporation's paper on the history of duress and the Jabiluka*

Project, undated.) This argument ignores the fact that in both the Ranger and Jabiluka agreements the NLC was also a direct beneficiary, receiving, *inter alia*, moneys for administration, consultations and monitoring.

⁵⁸ R Graves, 1979, 'Ranger: the events behind the signing of the agreement', *Chain Reaction*, vol 4, no 2.3, pp 46-66 in Lawrence, 2000, *Kakadu*, p 105.

⁵⁹ The singer-songwriter, renowned for his song, 'My brown-skin baby'.

⁶⁰ Grey, 1994, *Jabiluka*, p 194.

⁶¹ Grey, 1994, *Jabiluka*, p 210.

⁶² Lodged late in March 1978, J Toohey, 1981, *Alligator Rivers Stage II Land Claim*, AGPS, Canberra, p 1.

⁶³ Northern Land Council, transcript, Djarr Djarr meeting, 27 January 1981.

⁶⁴ Northern Land Council, transcript, Djarr Djarr meeting, 27 January 1981.

⁶⁵ Northern Land Council, transcript, Djarr Djarr meeting, 27 January 1981. The transcript does not name the speaker at this point in the meeting.

⁶⁶ Northern Land Council, transcript, Djarr Djarr meeting, 27 January 1981. This is an English translation of Mr Nayinggul's Gunwinkgu interpretation.

⁶⁷ Northern Land Council, transcript, Djarr Djarr meeting, 27 January 1981.

⁶⁸ Northern Land Council, Letter from legal officer P Teitzel to Messrs Perkins, Stevenson and Linton, Solicitors and Notaries, 28 January 1981.

⁶⁹ Northern Land Council, Telex from legal officer P Teitzel to Messrs Perkins, Stevenson & Linton Solicitors and Notaries, 29 January 1981.

⁷⁰ Northern Land Council, 1981, *Land Rights News*, no 31, March, p 4.

⁷¹ Such as that issued by NLC chief negotiator Eric Pratt Q.C. five months before traditional owners signed the agreement, stating 'early official approval' was imminent. Northern Land Council, untitled media release from NLC Jabiluka Negotiating Team, 1 March 1982. Later that month Pratt was criticised in Parliament by the Opposition for his actions during the debate over the proposed Koongarra mine (*Hansard*, 25 March 1982).

⁷² Such as the Commonwealth approval of Jabiluka issued on 16 March 1982 by the Deputy Prime Minister and Minister for Natural Resources Doug Anthony.

⁷³ Senator Susan Ryan to Prime Minister Malcolm Fraser, in P Niklaus, 1982, Land, power and yellowcake, *Australian Society*, vol 1, no 5, p 7.

⁷⁴ C Tatz, 1982, *Aborigines and Uranium and Other Essays*, Heinemann Educational Australia, Melbourne, p 185.

⁷⁵ Coombs, 1981, *How to Balance*, p 10.

⁷⁶ Niklaus, 1982, Land, power and yellowcake, p 7.

⁷⁷ Niklaus, 1983, Land, power and yellowcake, *Australian Society*, February, vol 2, no 1, p 27.

⁷⁸ Woodward, 1974, *Aboriginal Land Rights Commission: Second Report*, p 11.

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